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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SRD, INC., Plaintiff, v. FRANK J. BURGESS, as Cotrustees, etc., et al., Defendants and Respondents; REZA DARYAIE, Objector and Appellant.	B185511 (Los Angeles County Super. Ct. No. BS077719)

APPEAL from a judgment of the Superior Court of Los Angeles County. Murray E. Gross, Commissioner. Affirmed.

Bleau Fox & Associates, Thomas P. Bleau, H. Michael Song and Gennady L. Lebedev for Objector and Appellant.

Best Best & Krieger, Douglas S. Phillips and Kira L. Klatchko for Defendants and Respondents.

Appellant Reza Daryaie appeals from a trial court order amending a judgment against SRD, Inc. (SRD) by adding appellant as an additional judgment debtor on the judgment. Because substantial evidence supports the trial court order and amended judgment, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Lease

In 1998, respondents, Frank J. Burgess and Lorna D. Burgess, as Trustees of the Burgess Family Trust dated December 5, 1989,[1] leased a gas station and a mini mart in Palm Springs to SRD pursuant to a 40-year lease. The lease required that SRD obtain respondent's written consent before any assignment, and provided that respondent's consent could not be unreasonably withheld. The parties further agreed to binding arbitration of all lease disputes, including an award of attorney fees to the prevailing party. SRD's president, appellant, signed the lease on behalf of SRD.

A Lease Dispute Arises and the Parties Proceed to Arbitration

In 1999, a dispute arose between the parties regarding SRD's failed attempt to sell the gas station and mini mart business to a third party. As required by the lease, SRD's claims were submitted to binding arbitration. SRD was represented by Thomas P. Bleau (Bleau). Numerous hearings were held, and appellant was always present. Appellant also testified for SRD.

Ultimately, respondent prevailed in the arbitration and moved for an award of attorney fees, arbitration fees, and costs. The arbitrator granted respondent's motion, finding that it was the prevailing party, and awarded $91,423.90 in attorney fees, costs, and arbitration fees to respondent and against SRD.

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[1] Throughout the appellate record and the briefs, the parties refer to the Burgess Family Trust dated December 5, 1989, as the respondent. To avoid confusion, we refer to the Burgess Family Trust dated December 5, 1989, as respondent herein.

Judgment on the Arbitration Award

On August 15, 2002, respondent filed its petition to confirm the arbitration award and for entry of judgment against SRD. Judgment confirming the arbitration award was entered on October 2, 2002.

Postjudgment Conduct by SRD and Appellant

The mini mart closed on October 15, 2002. During the last month that the gas station was open, only cash was accepted for gas purchases. Also during that time, appellant threw away all of the merchandise, took equipment, and distributed all of the monies to himself, his family, and to pay taxes and wages, leaving no monies to pay creditors.

Postjudgment Discovery

On May 29, 2003, respondent filed a motion for an order granting leave to conduct postjudgment discovery. Respondent sought discovery to evaluate the propriety of adding appellant to the judgment as an additional judgment debtor. Over appellant's opposition, the trial court granted respondent's motion.

Appellant's Deposition

Respondent deposed appellant on September 22, 2003. He testified that: Bleau had been his personal attorney since 1997; that Bleau was the attorney for appellant's other business, Pride's Car Care; and that Bleau was SRD's attorney.

He also stated that he contributed $200,000 to SRD from personal funds or funds that he borrowed to construct the mini mart's interior improvements and that this contribution was neither formalized in any way nor evidenced by any documents. During the deposition, he identified a personal $12,000 check to pay half the cost of the mini mart's walk-in cooler.

Appellant also explained that although he personally purchased whatever inventory the mini mart needed, he never documented those purchases. And he stated that he received between $400 and $500 in cash a month from the mini mart.

As for what occurred after respondent obtained its judgment against SRD, appellant testified that during the month before the mini mart was closed, a sign was

posted advising customers that gas would be sold for cash only. He also stated when the mini mart closed, he threw all of the merchandise away, sold all the gas that could be removed from the underground tank, and distributed all the money from the mini mart to pay himself and his family, and to pay taxes and wages, leaving no cash to pay creditors. Appellant further testified that he took all of the equipment from the mini mart when it closed because it was his.

Regarding the arbitration proceedings between SRD and respondent, appellant testified that he attended each day of the hearings, that he oversaw the litigation on behalf of himself and his family, and that he made the ultimate litigation decisions, including the decision to offer to settle the case.

As for SRD's corporate status, appellant testified that he formed SRD as a California corporation in 1998 and was its sole shareholder, director, and officer. He could not recall whether stock certificates were issued or whether he filed a declaration of lost stock certificates with the Secretary of State. Appellant also admitted that SRD's 1997 and 1998 statements of domestic stock corporation, filed with the California Secretary of State, listed appellant's home address as SRD's corporate address.

SRD's Judgment Debtor Examination

On September 22, 2004, respondent conducted a judgment debtor examination of SRD by examining appellant. During the examination, appellant identified a series of charge receipts documenting over $650 in gasoline, cash, and merchandise taken from the mini mart in June 2000 by appellant's son, daughter-in-law, and other family members; a charge receipt from the mini mart, reflecting that cash had been taken from the mini mart to pay for work done at appellant's Palm Springs home; charge receipts showing that in 2000, 2001, and 2002, the mini mart paid for groceries and merchandise bought for personal use from Costco, Sam's Club, Stater Brothers, and a deli, all located near appellant's Tarzana home; a charge receipt showing that, although the mini mart did not have a pool, it paid for swimming pool supplies purchased from a Tarzana pool supply store; a receipt showing that $200 in cash was taken from the mini mart to pay for appellant's pool service at his home; at least two mini mart checks, both payable to

appellant, to allegedly reimburse appellant for undocumented personal loans appellant claimed that he made to SRD; documents showing that appellant conduct SRD's business from his Encino office where he ran his other business; a check from the mini mart to Pride's Car Care to reimburse it for merchandise that Pride's Car Care purchased for the mini mart; and a deposit slip reflecting an undocumented $6,000 loan from appellant to SRD.

Respondent's Motion to Amend the Judgment

Following discovery, in November 2004, respondent filed a motion to amend the judgment to include appellant as an additional judgment debtor. Respondent argued that appellant controlled the litigation between SRD and respondent and that appellant is SRD's alter ego, demonstrated by his diversion of SRD funds for noncorporate use, his treatment of SRD assets as his own, appellant and SRD's failure to segregate funds, the fact that appellant was the sole shareholder, officer and director of SRD, and appellant and SRD's disregard of legal formalities. Appellant opposed the motion, disputing respondent's evidence and offering explanations for the challenged misconduct.

The hearing on respondent's motion was held on June 21, 2005. Initially, the trial court set forth its tentative ruling to grant respondent's motion. It reasoned: "[I]n reviewing the documents and the evidence, the court finds that there is unity of interest in ownership. That [appellant] did control the underlying litigation and he dealt with counsel. He now—as the suit progressed, he helped in the defense and he's also the sole stockholder—shareholder and director. There apparently were no stock certificates ever issued.

"In addition to that, the court, in reviewing the evidence, would find that it would be an injustice not to, and as the judgment debtor, to add him. As I said, he was the shareholder and director. He used the same attorney. He used the assets personally and he let these family members use the assets of [SRD]. He did deposit personal funds into [SRD's] bank account without ever making a record of any loan. He paid for work at his own private residence from [SRD] funds. He sold gas for cash. His explanation was that he couldn't afford the credit card charges.

"I don't find that believable. He took, and his family took, cash from the register. He bought rotisserie chicken, [C]esar salads, bananas and shoes using [SRD's] funds, and those weren't to be sold on the – I don't believe they were to be sold in the mini market at the service station.

". . . . . .

"In looking at all the evidence, I didn't find [appellant's] declaration to be credible. I find that the judgment creditor has, by a preponderance of the evidence, established the alter ego that is necessary, and that, as I said, I find that there is a unity of ownership and it would be an inequitable result if he was not added as a judgment debtor."

After hearing argument from counsel, the trial court then granted respondent's motion. It found that the "totality of the evidence" supported a finding of alter ego.

The trial court entered its order granting respondent's motion on July 11, 2005. The amended judgment was entered July 22, 2005. This timely appeal followed.

DISCUSSION

I. *Appealability*

Respondent urges us to dismiss this appeal on the grounds that (1) it is from a nonexistent June 21, 2005, order; and (2) even if we construe the notice of appeal as being from the July 11, 2005, order, the appeal is still flawed because that order is not appealable; the appeal should have been taken from the amended judgment. We reject both arguments.

California Rules of Court, rule 1(a)(2) provides that a notice of appeal "is sufficient if it identifies the particular judgment or order being appealed." Appellant's notice of appeal references a June 21, 2005, order. But no order or judgment was entered on that date. Rather, the challenged order was entered on July 11, 2005. Nevertheless, under the liberal rules of construction, this notice of appeal is adequate. It specifically indicates that appellant is appealing from the trial court order "amending the judgment in favor of [r]espondent . . . to include [appellant] as an additional judgment debtor." Although the date mentioned in the notice of appeal is technically incorrect, the hearing

on respondent's motion to amend the judgment was held on June 21, 2005, at which time the trial court stated that it was going to grant respondent's motion. Under these circumstances, we conclude that the notice of appeal provides sufficient notice of an appeal from the order amending the judgment. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20–21.)

We similarly rebuff respondent's contention that the appeal should be dismissed because the appeal is from the order granting the motion to amend the judgment, rather than from the amended judgment itself. The amended judgment was filed July 22, 2005. The notice of appeal was filed August 18, 2005. We construe the notice of appeal from the order granting respondent's motion to amend the judgment as referring to the subsequent July 22, 2005, amended judgment. (*McClellan v. Northridge Park Townhome Owners Assn.* (2001) 89 Cal.App.4th 746, 751 (*McClellan*).)

II. *Standard of Review*

"The parties agree that in reviewing a trial court's order amending a judgment by naming an additional judgment debtor, an appellate court must consider whether the trial court's findings are supported by substantial evidence." (*McClellan, supra*, 89 Cal.App.4th at pp. 751–752.) Under that standard, we review the record in the light most favorable to respondent, resolving all evidentiary conflicts and indulging all reasonable inferences in support of the judgment, to determine whether there is sufficient substantial evidence to warrant a reasonable trier of fact in finding for respondent based upon the whole record. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.)

III. *Substantial Evidence Supports the Trial Court's Order and Amended Judgment*

A. Code of Civil Procedure Section 187 allows a trial court to amend a judgment

"Pursuant to [Code of Civil Procedure] section 187, a trial court has jurisdiction to modify a judgment to add additional judgment debtors. [Citation.]" (*McClellan, supra*, 89 Cal.App.4th at p. 752.) "Utilizing [Code of Civil Procedure] section 187, judgments are typically 'amended to add additional judgment debtors on the grounds that a person or

entity is the alter ego of the original judgment debtor. [Citations.] This is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant. [Citations.] "Such a procedure is an appropriate and complete method by which to bind new individual defendants where it can be demonstrated that in their capacity as alter ego of the corporation they in fact had control of the previous litigation, and thus were virtually represented in the lawsuit." [Citation.]' [Citations.]" (*McClellan*, *supra*, at p. 752.)

B. The trial court may disregard the corporate entity as a means of exercising its jurisdiction under Code of Civil Procedure section 187

"It is well settled that when a corporation 'is used by an individual or individuals, or by another corporation, to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may *disregard the corporate entity* and treat the acts as if they were done by the individuals themselves or by the controlling corporation . . . the court will disregard the "fiction" of the corporate entity[.]' [Citation.]" (*McClellan*, *supra*, 89 Cal.App.4th at pp. 752–753.)

To invoke alter ego liability, two conditions must be met: (1) there must be such a unity of interest and ownership between the corporation and the shareholder that the separate personalities of the corporation and the shareholder do not in reality exist; and (2) there must be an inequitable result if the acts in question are treated as those of the corporation alone. (*F. Hoffman-La Roche v. Superior Court* (2005) 130 Cal.App.4th 782, 796–797.) "'Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other.' [Citations.] Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers. [Citations.] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [Citation.]" (*Sonora Diamond Corp. v. Superior*

Court (2000) 83 Cal.App.4th 523, 538–539; see also *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838–840 [listing numerous factors that courts consider when deciding whether alter ego liability exists].)

C. Substantial evidence supports the trial court's finding of alter ego liability

Here there is substantial evidence to support the trial court's finding that appellant was the alter ego of SRD. He was SRD's sole director, officer, and shareholder. There is no evidence that in that capacity, he complied with corporate formalities. For example, the evidence supports the inference that no shares of SRD stock were ever issued.

Moreover, there is evidence that appellant commingled his individual funds with SRD's funds and used SRD's funds for his own purposes. Cash was taken from the mini mart to pay for work done at appellant's Palm Springs home. In 2000, 2001, and 2002, SRD paid for groceries and merchandise bought for personal use from stores near appellant's Tarzana home. SRD even paid for swimming pool supplies and pool services for appellant. Furthermore, appellant made a host of personal loans to SRD without corporate loan records.

The thrust of appellant's argument on appeal constitutes a reargument of the facts, coupled with an attempt to explain away the evidence. This argument fails. The trial court expressly found appellant not credible, and we are not in the position to second-guess that assessment. (*People v. French* (1978) 77 Cal.App.3d 511, 523 [holding that the appellate court does not reassess credibility of witnesses].) The trial court weighs the evidence and determines issues of credibility and these determinations and assessments are binding and conclusive on the appellate court. (*In re Marriage of Dick* (1993) 15 Cal.App.4th 144, 160.)

We further conclude that the evidence supports the trial court's finding that an inequitable result would be reached if alter ego liability were not imposed. Immediately following respondent's judgment against SRD on October 2, 2002, appellant dissipated SRD's assets and closed the mini mart on October 15, 2002, rendering SRD judgment-proof. Appellant threw away SRD merchandise and drained the mini mart's underground

tank of gas, which he sold for cash. He even removed equipment from the mini mart, including an ice maker, refrigerator, safe, merchandise holds, and two security cameras, and put them in his garage or gave them away to family and friends because "they were [his]." Given appellant's active participation in SRD's inability to satisfy respondent's judgment, equity compels the imposition of alter ego liability upon appellant.

D. Sufficient Evidence that Appellant's Interests were Represented

Having concluded that substantial evidence supports the trial court's finding that appellant is in fact the alter ego of SRD, we next consider whether appellant's interests were adequately represented in the underlying litigation. We easily conclude that they were. Represented by counsel, SRD initiated the instant action against respondent. At all times, SRD vigorously pursued its claims, including by attending all days of the arbitration proceedings, filing briefs, and presenting oral argument to the arbitrator. Because the underlying action was contested, appellant's interests were effectively represented through SRD. (*NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 780; see also *Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 151-152.)

Moreover, there is sufficient evidence that appellant controlled the underlying litigation. He was much more than simply aware of the arbitration proceedings. He attended every day of the arbitration and he testified. Appellant even retained Bleau, his outside, personal attorney (who also acted as counsel to appellant's other business, Pride's Car Care), to represent SRD in its action against respondent. (*NEC Electronics Inc. v. Hurt*, *supra*, 208 Cal.App.3d at p. 781.)

Taken together, the evidence overwhelmingly supports the trial court's order and judgment. Appellant was SRD's alter ego, and appellant's interests were far more than adequately represented in the underlying proceedings. (*Gottlieb v. Kest*, *supra*, 141 Cal.App.4th at pp. 151–152.)

DISPOSITION

The judgment of the trial court is affirmed. Respondent is entitled to costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD